

IMAX Corp. v Essel Group

2015 NY Slip Op 32437(U)

October 9, 2015

Supreme Court, New York County

Docket Number: 650342/2013

Judge: Saliann Scarpulla

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: SALIANN SCARFULLA
Justice

PART 39

Index Number : 650342/2013
IMAX CORPORATION
vs.
ESSEL GROUP
SEQUENCE NUMBER : 005
MONEY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the attached memorandum decision and order dated _____.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 10/9/15

[Signature], J.S.C.
HON. SALIANN SCARFULLA

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 39

-----X
IMAX CORPORATION,

Petitioner,

DECISION AND ORDER

-against-

Index No. 650342/2013
Motion Seq. 005

THE ESSEL GROUP, SUBHASH CHANDRA, ATUL
GOEL, AMIT GOENKA, LAXMI GOEL, ZEE TV
USA, INC., ASIA TV USA LTD., AND NATURAL
WELLNESS USA, INC.,

Respondents.

-----X
Saliann Scarpulla, J.:

In this special proceeding, petitioner IMAX Corporation (“IMAX”) seeks, pursuant to CPLR § 5303, to domesticate a judgment that it obtained against E-City Entertainment I Pvt. Ltd. (“E-City”) from the Superior Court of Justice in Ontario, Canada, directly against the respondents, The Essel Group, Subhash Chandra (“Chandra”), Atul Goel (“A. Goel”), Amit Goenka (“Goenka”), Laxmi Goel (“L. Goel”), Zee TV USA, Inc. (“Zee TV”), Asia TV USA Ltd. (“Asia TV”) and Natural Wellness USA, Inc. (“Natural Wellness”) (collectively, “the respondents”).

In addition, IMAX seeks a turnover order directing the respondents to deliver sufficient funds to satisfy a judgment, or to deliver their personal property to the Sheriff

of the County of New York to satisfy the judgment, and directing respondents to render an accounting of their corporate assets, pursuant to CPLR § 5225(b).¹

Background

IMAX, a Canadian company with its principal place of business in Ontario, Canada, is one of the world's leading entertainment technology companies, specializing in motion picture technology and large format motion picture presentations. At the heart of this proceeding is a September 2000 agreement between IMAX and E-City that was eventually breached by E-City. As a result, IMAX obtained a multi-million dollar judgment against E-City.

In this proceeding, IMAX claims that The Essel Group, which allegedly "owns and controls" E-City, perpetrated a fraud upon IMAX when it transferred E-City's assets to other companies within The Essel Group, in order to avoid payment of an arbitration award issued by the International Chamber of Commerce arbitration panel ("ICC Arbitration Panel") in favor of IMAX and against E-City.

According to the petition, The Essel Group is an "Indian-based conglomerate" that owns and controls several U.S. companies, including Zee TV, Asia TV, and Natural Wellness. IMAX claims that the chairman of The Essel Group is Subhash Chandra, one

¹ The parties' arguments related to IMAX's turnover claim appear in briefs filed under motion seq. no. 001. Because IMAX amended the petition after filing motion seq. no. 001, that motion is denied as moot. However, the Court recognizes and considers the parties' arguments regarding the turnover claim submitted with motion seq. no. 001, as the parties seek to incorporate those arguments into the current motion.

of the wealthiest men in India. IMAX alleges that The Essel Group owns and controls E-City, an entity that the Essel Group set up “with a view to redefine the entertainment and leisure landscape in the Indian Subcontinent.”² Respondents Atul Goel, Amit Goenka and Laxmi Goel are alleged “promoters” and directors of E-City, and “promoters” of The Essel Group. According to IMAX, under Indian law, a “promoter” is an individual who establishes a company, maintains an ownership interest in the company, and has managerial control to appoint officers and directors of the company.

On September 28, 2000, IMAX entered into a contract with E-City, under which E-City agreed to lease six IMAX systems to be used in theaters in India (“the Master Agreement”). After making the payment for the first system, E-City failed to meet its obligations under the Master Agreement. IMAX alleges that it attempted to resolve the matter by speaking with Subhash Chandra and Himanshu Mody of The Essel Group.

IMAX alleges that Chandra expressed to IMAX that The Essel Group “was not doing as well as anticipated,” and asked for a “modification of the multi-system payment schedule reflected in the Master Agreement.” Thereafter, Chandra agreed to pay \$285,000 in arrears to IMAX, and The Essel Group arranged for that amount to be paid to IMAX. According to IMAX, “[w]hen no further payments were made, Mr. Chandra subsequently traveled to New York to meet in person with IMAX’s Co-Chief Executive

² In their memorandum of law in opposition, respondents assert that The Essel Group is not a corporation or a legal entity. Instead, according to respondents, it is a marketing device. No responsive papers were filed on behalf of The Essel Group.

Officer. Mr. Chandra again explained the difficulties that The Essel Group was facing and stated that The Essel Group needed to prioritize its business commitments. Mr. Chandra stated that The Essel Group had decided to make less of a commitment to the entertainment arena so that The Essel Group could use available cash for other endeavors.”

As a result of E-City’s failure to make payments under the Master Agreement, IMAX invoked the dispute resolution provision of the Master Agreement, which provided for all disputes to be decided by arbitration pursuant to the International Chamber of Commerce (“ICC”) rules.

On June 18, 2004, IMAX filed a request for arbitration against E-City. In the request, IMAX alleged that E-City breached the Master Agreement. The ICC decided that the arbitration would be held in London, and appointed a panel of arbitrators chaired by Arthur Marriott, Q.C. of Dewey LeBoeuf. Under the ICC rules, IMAX and E-City were required to share the costs of the arbitration. According to IMAX, E-City refused to pay any costs towards the arbitration, although it retained counsel and participated in the proceedings. As a result, IMAX paid the entire cost of arbitration.

At the arbitration, an initial session on the issue of liability was held in December 2005. At that session, E-City presented witnesses, Sanjay Das and Himanshu Mody. IMAX alleges that “Mr. Das testified that he had been transferred by The Essel Group

from E-City to Zee Television and that the ‘parentage’ of both companies within Essel Group was the same.”

In February 2006, the arbitration panel issued an award in favor of IMAX. In the 60-page opinion, the panel found that the Master Agreement was fully enforceable, and that E-City was obligated to lease six systems from IMAX. After additional hearings on damages, the ICC arbitration panel issued a final award on damages for a total amount of \$11,309,496.06, plus interest at a rate of \$2,512.60 per day from October 1, 2007.

IMAX alleges that, although it obtained an arbitration award against E-City, the Essel Group and the individual respondents caused a demerger of E-City, to transfer E-City’s assets to other companies within The Essel Group. Specifically, IMAX alleges that E-City’s board – including A. Goel, L. Goel, and Goenka – approved a demerger of E-City into two separate companies – E-City Real Estates Pvt. Ltd. and E-City Projects Construction Pvt. Ltd.

On June 20, 2007, the Bombay High Court approved the demerger of assets of E-City to E-City Real Estate, and later approved the demerger of assets to E-City Projects Construction on August 31, 2007.³ Because E-City demonstrated that it obtained consent

³ The E-City Real Estate demerger petition valued E-City’s assets at 2,152,380,286 Indian rupees, approximately \$50,055,355 U.S. dollars. The E-City Real Estate demerger petition sought a transfer of 921,006,906 Indian rupees approximately \$21,418,626.00, from E-City to E-City Real Estate. The E-City Projects Construction demerger petition sought a transfer of 1,198,300,000 Indian rupees, approximately \$27,867,442, from E-City’s assets.

from a large majority of its creditors, the high court dispensed with hearings to allow for objections to the demerger petitions.

IMAX alleges that, prior to the demerger, E-City had approximately \$50 million in assets, which could have satisfied the award, but that E-City was left with approximately \$769,287 in assets after the demerger. IMAX asserts that the petition for the demerger failed to mention IMAX as a creditor, although it mentioned other secured and unsecured creditors. In their opposition papers, the respondents argue that the purpose of the E-City demerger was to facilitate a real estate expansion plan and to obtain foreign direct investment. The respondents further argue that E-City's application for demerger included information concerning the pending arbitration proceedings between IMAX and E-City.

Since obtaining the arbitration award, IMAX has been attempting to enforce the award for a significant time. Recently, E-City brought a proceeding in Mumbai to challenge the award. IMAX opposed this challenge, and the proceeding was fully briefed and argued in 2009, but a final decision has not yet been rendered by that court. Due to that delay, IMAX commenced a proceeding in Ontario, Canada to confirm the award. E-City opposed this application, but, by order dated November 29, 2011, the Superior Court of Justice in Ontario issued a judgment confirming the arbitration award.⁴

⁴ IMAX also commenced an action entitled *IMAX Corp. v. E-city Entertainment (I) Pvt. Ltd.*, Index No. 100596/12, in New York Supreme Court seeking recognition of the Canadian judgment. E-City did not contest this proceeding. On May 4, 2012, a

In this petition, IMAX seeks to enforce the Canadian judgment against respondents on the theory that they should be treated as alter egos of E-City.⁵ In addition, IMAX seeks a turnover order directing the respondents to deliver sufficient funds to satisfy a judgment, or to deliver their personal property to the Sheriff of the County of New York to satisfy the judgment, and directing respondents to render an accounting of their corporate assets.

In opposition, respondents contend that this proceeding should be dismissed because they were not parties to the arbitration, the Canadian action, or the New York proceeding to confirm the award. Furthermore, respondents argue that IMAX cannot establish that they have possession or custody of any money or other personal property in which E-City has any interest. Finally, respondents argue that because The Essel Group is neither a corporation nor any other sort of legal entity, it has no corporate veil to pierce.

judgment was entered for IMAX and against E-City Entertainment (I) Pvt. Ltd. in the amount of \$15,547,611.51. By decision dated July 2, 2014, Supreme Court Justice Ellen M. Coin vacated this default judgment and dismissed the action.

⁵ In a separate related action, I granted IMAX's motion for summary judgment seeking recognition of the Canadian judgment against E-City as a New York judgment. *Imax Corp. v. E-City Entertainment (I) Pvt. Ltd.*, Index No. 157344/2014 (New York County October 2, 2015).

Discussion

I. Turnover Order Pursuant to CPLR § 5225(b)

A. Personal Jurisdiction

In order to obtain a turnover order, a petitioner must demonstrate the existence of personal jurisdiction over the respondents. *Koehler v. Bank of Bermuda Ltd.*, 12 N.Y.3d 533, 540 (2009). A “turnover order merely directs a defendant, over whom the New York court has jurisdiction, to bring its own property into New York.” *Gryphon Domestic VI, LLC v. APP Int’l Fin. Co., B.V.*, 41 A.D.3d 25, 31 (1st Dep’t 2007).

IMAX argues that this Court has personal jurisdiction over the respondents. Specifically, IMAX alleges that general jurisdiction exists over Asia TV, Zee TV, Natural Wellness, The Essel Group, and Chandra pursuant to CPLR § 301, and specific jurisdiction exists over The Essel Group, Chandra, A. Goel, L. Goel, and Goenka pursuant to CPLR § 302(a)(3).

1. CPLR § 301 - General Jurisdiction

Under CPLR § 301, the court “may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore.” CPLR § 301 “preserves all previously existing jurisdictional bases’ . . . ‘the bases for jurisdiction recognized by our common law before the date of the enactment of the CPLR [were] physical presence within the State, domicile or consent.’” *Pichardo v. Zayas*, 122 A.D.3d 699, 702 (2d Dep’t 2014) (internal citations omitted).

In order to exercise general jurisdiction over an individual, “the paradigm forum . . . is the individual’s domicile,” whereas for a corporation “it is an equivalent place, one in which the corporation is fairly regarded as at home.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853-54 (2011); *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014).

A corporation’s “place of incorporation and principal place of business” are paradigm bases for general jurisdiction. *Daimler*, 134 S. Ct. at 760. New York courts may not exercise jurisdiction over a corporate defendant under CPLR § 301 unless the corporation is “essentially at home” in this state, such as where the corporate defendant is incorporated here, or has its principal place of business here. *Goodyear*, 131 S. Ct. at 2851; *Magdalena v. Lins*, 123 A.D.3d 600, 601 (1st Dep’t 2014); *D & R Global Selections, S.L. v. Pieiro*, 128 A.D.3d 486 (1st Dep’t 2015).

Under CPLR § 301, jurisdiction over a non-domiciliary individual may be exercised if the defendant is “‘doing business’ in New York, through a voluntary, continuous and self-benefitting course of conduct, sufficient to render him subject to the general jurisdiction of this State’s courts.” *Ralph Cole Hardware v. Ardowork Corp.*, 117 A.D.3d 561 (1st Dep’t 2014); *Lancaster v. Colonial Motor Freight Line, Inc.*, 177 A.D.2d 152, 159 (1st Dep’t 1992).

a. Asia TV, Zee TV, and Natural Wellness

IMAX asserts that this court has personal jurisdiction over Asia TV, Zee TV, and Natural Wellness because these companies are doing business in New York. According to IMAX, Asia TV's corporate headquarters are located in New York. IMAX argues that Zee TV is a television network whose broadcasts are viewed in 16.5% of New York households during prime time hours by persons 21 and older, and that Natural Wellness USA is a company whose primary brand is "Veria," which is regularly marketed and sold in New York.

At the outset, I note that Asia TV concedes that this Court has personal jurisdiction over it because its principal place of business is in New York. Although personal jurisdiction exists over Asia TV, I find that neither Zee TV or Natural Wellness are subject to personal jurisdiction under CPLR § 301. Neither Zee TV or Natural Wellness are "at home" in New York. Zee TV is a Wyoming corporation and Natural Wellness is a Delaware corporation. Zee TV and Natural Wellness are neither incorporated in New York, nor is New York their principal place of business here.

IMAX contends that Natural Wellness does business under the "Veria Living" brand, which identifies the location of its corporate office as New York City. However, the "UCC Financing Statement" annexed to IMAX's papers indicates that the mailing address for "Natural Wellness USA, Inc. dba Veria" is in Texas. As for Zee TV, although IMAX argues that it is present in New York, the document annexed to IMAX's

papers indicates that Zee TV's "Principal Address" is a "PO Box" in New York, which is not sufficient to find personal jurisdiction over Zee TV under CPLR § 301.

b. The Essel Group

IMAX contends that The Essel Group is subject to general jurisdiction because it advertises itself as doing business in New York, its website indicates that it has offices in New York, and because its asset, Asia TV, is here in New York.

These facts do not permit this court to subject The Essel Group to its jurisdiction. The Essel Group is situated in Mumbai. It is not incorporated in New York, nor does it have its principal place of business here, and the facts as set forth by IMAX do not establish that The Essel Group has enough of a presence in New York to be subject to general jurisdiction.

As an alternate theory of jurisdiction, IMAX contends that general jurisdiction over exists over The Essel Group because it is an alter ego of E-City and Asia TV, which are subject to personal jurisdiction. Although it is true that where personal jurisdiction exists over a defendant, jurisdiction over that party's alter ego is appropriate, IMAX has not established Asia TV to be The Essel Group's alter ego. *New Media Holding Co. L.L.C. v. Kagalovsky*, 118 A.D.3d 68, 77 (1st Dep't 2014); *see also Transfield ER Cape Ltd. v. Industrial Carriers, Inc.*, 571 F.3d 221, 224 (2d Cir 2009) ("in general, 'alter egos are treated as one entity' for jurisdictional purposes") (internal citation omitted). To establish alter-ego liability, IMAX must allege that the owners of The Essel Group

exercised ““complete domination of [Asia TV] in respect to the transaction attacked’ and ‘that such domination was used to commit a fraud or wrong against [IMAX] which resulted in [IMAX’s] injury [citation omitted].” *Baby Phat Holding Co., LLC v. Kellwood Co.*, 123 AD.3d 405, 407 (1st Dep’t 2014); *Tap Holdings, LLC v. Orix Fin. Corp.*, 109 A.D.3d 167, 174 (1st Dep’t 2013); *Peery v. United Capital Corp.*, 84 A.D.3d 1201, 1202 (2d Dep’t 2011).

For a court to find that two corporations constitute an alter ego relationship, “[a]t the very least, there must be direct intervention by the parent in the management of the subsidiary to such an extent that ‘the subsidiary’s paraphernalia of incorporation, directors and officers’ are completely ignored.” *Billy v. Consolidated Mach. Tool Corp.*, 51 N.Y.2d 152, 163 (1980) (internal citations omitted).

In order to determine whether Asia TV and The Essel Group are essentially one entity, or whether The Essel Group dominated Asia TV’s corporate activities, factors that must be considered include:

“(1) the absence of the formalities and paraphernalia that are part and parcel of the corporate existence, *i.e.*, issuance of stock, election of directors, keeping of corporate records and the like, (2) inadequate capitalization, (3) whether funds are put in and taken out of the corporation for personal rather than corporate purposes, (4) overlap in ownership, officers, directors and personnel, (5) common office space, address and telephone numbers of corporate entities, (6) the amount of business discretion displayed by the allegedly dominated corporation, (7) whether the related corporations deal with the dominated corporation at arms length, (8) whether the corporations are treated as independent profit centers, (9) the payment or guarantee of debts of the dominated corporation by other corporations in the group, and

(10) whether the corporation in question had property that was used by other of the corporations as if it were its own”

Wm. Passalacqua Builders, Inc. v. Resnick Devs. S., Inc., 933 F.2d 131, 139 (2d Cir. 1991). Succinctly put, to determine whether domination took place, courts consider whether the parent company engaged in self-dealing, commingled funds, or disregarded corporate formalities. *Hartej Corp. v. Pepsico World Trading Co.*, 255 A.D.2d 233 (1st Dept 1998).

Here, to connect the assets of Asia TV with those of The Essel Group, IMAX alleges that The Essel Group was deeply involved in the workings of Asia TV. However, IMAX is unable to establish that The Essel Group abused the corporate form of Asia TV to perpetrate a fraud upon IMAX. IMAX does not set forth facts that The Essel Group and Asia TV disregarded corporate formalities, and were therefore not separate corporate entities.

In the petition, IMAX alleges that “The Essel Group and the individual Respondents own and/or control directly or indirectly various assets in the United States. Among those assets are Zee TV, Asia TV and Natural Wellness.” IMAX offers the affidavit of Rahul R. Mahajan, an attorney admitted to practice in India, who avers that, under Indian law, “a group,” is a “group of companies under common control and under Indian law when there ‘is evidence of [a] general tendency to ignore the separate legal entities of the various companies within a group, and to look instead at the economic entity of the whole group.’”

In opposition, Asia TV argues that it is not owned by either The Essel Group or Chandra. Asia TV asserts, relying upon the affidavit of Sanjay Pathak, who is the “sole indirect owner” of Asia TV, that Asia TV is a Delaware corporation, incorporated on August 10, 2009, two years after the second demerger transaction involving E-City. In his affidavit, Pathak states: “I own 100% of Hamilex Services, a corporation formed and existing under the laws of the British Virgin Islands, Hamilex owns 100% of Russoli Holdings Ltd, a corporation formed and existing under the laws of the British Virgin Islands, and Russoli owns 100% of Asia TV USA.” Pathak further avers that “Asia TV USA is completely independent from Mr. Chandra and Asia Today Limited.”

In response, IMAX argues that it is difficult to obtain public information about the company’s ownership and business, and, consequently, relies upon websites, website newsletters and articles, to establish a close relationship between The Essel Group and Asia TV. Ultimately, IMAX argues that “Asia TV is a New York company within The Essel Group which is now being used as a vehicle for a major U.S. expansion . . . driven by the very same promoter, Subhash Chandra . . .”

According to IMAX, in addition to using the address of Asia TV as a business address on its website, The Essel Group’s website contains statements that Asia TV is one of The Essel Group’s companies. For example, in an October 4, 2011 Essel Newsletter, it is stated that Asia TV represents “the giant South Asian programmer [Zee TV] in the States, as well as the newly rebranded wellness channel Veria Living.” According to this

source, Chandra, “whose Zee TV programming in its various iterations is now seen in 167 nations,” says that Asia TV is negotiating with a number of “top multichannel video providers,” and, according to Chandra, “[i]t’s a huge repertoire that we can draw from.” According to a November 18, 2011 newsletter, Veria Living and Zee TV are managed in the United States by Asia TV.

IMAX also submits documents from the action entitled, *Douglas Elliman LLC v Neiditch*, Index No. 158525/2012, to argue that Chandra’s interaction with a broker in contemplation of purchasing an apartment in New York City, and his use of office space at the offices of Asia TV, further establish an alter ego relationship between The Essel Group and Asia TV. Upon review of these documents, I find that the conclusions IMAX draws about The Essel Group’s relationship with Asia TV are conclusory and unsupported by admissible, competent evidence.

Even if the documents submitted establish that The Essel Group shared a close business relationship with Asia TV for the purpose of distributing programming and promoting the network, the submissions on this motion fall short of showing that The Essel Group exercised the type of domination and control over the day-to-day operations of Asia TV that made Asia TV simply a sham corporation, acting at The Essel Group’s behest. *See Matter of Morris v. New York State Dept. of Taxation & Fin.*, 82 N.Y.2d 135, 141 (1993). “[C]losely associated corporations, even ones that share directors and officers, will not be considered alter egos of each other if they were formed for different

purposes, neither is a subsidiary of the other, their finances are not integrated, assets are not commingled, and the principals treat the two entities as separate and distinct.” See *Lee v. Arnan Dev. Corp.*, 77 A.D.3d 1261, 1262 (3d Dep’t 2010).

Other than IMAX’s allegations that Chandra is the Chairman of Asia TV and used office space there, there is no evidence submitted showing that The Essel Group and Asia TV share directors and officers. Further, although IMAX alleges that Chandra referred to Asia TV as “a company within the Essel Group,” there are no specific facts alleged showing that these two entities have integrated finances, or commingled assets.

Further, and critically, because Asia TV was not in existence until 2009, well after the demerger of E-City, IMAX cannot establish that The Essel Group used its control over Asia TV with respect to the transaction at issue in this proceeding. Nor are there any allegations that The Essel Group exercised its dominion over Asia TV for the purpose of any wrongdoing, including the commission of a fraud upon IMAX. Accordingly, this court does not have personal jurisdiction over The Essel Group as an alter ego of Asia TV under CPLR § 301.

c. Subhash Chandra

IMAX argues that this Court has general jurisdiction over Chandra because he is doing business in New York pursuant to CPLR § 301. Specifically, IMAX alleges that Chandra: (1) recently purchased a multi-million dollar triplex condominium in Manhattan; (2) invested \$250 million of his family’s money in Veria Living, based in

New York City; (3) has trademarked his name in the United States and Veria Living products bearing his name are sold here; (4) markets his companies' offerings to residents in New York; and (5) appeared in New York City in November 2011 to receive an award.

Some of Imax's allegations are unsupported and others, even if true, do not establish this court's jurisdiction over Chandra under CPLR § 301. Under CPLR § 301, jurisdiction is not exercised over an individual simply because of his ownership of an apartment in New York, where the individual is not domiciled here. *Magdalena*, 123 A.D.3d at 601. In any event, aside from its own speculation, IMAX has not submitted sufficient competent evidence to show that Chandra purchased the apartment at issue in the *Douglas Elliman* action.⁶ IMAX's other allegations respecting Chandra are vague, and thus, these generalized allegations about Chandra's actions, on behalf of his company, do not appear to be "so 'continuous and systematic' as to render [him] essentially at home in the forum State." *Daimler*, 134 S. Ct. at 61.

⁶ On this point, IMAX relies on newspaper articles for its assertion that Chandra purchased an apartment in New York City, or that Asia TV purchased an apartment in New York City on his behalf. Newspaper articles are not admissible evidence and parties may not rely upon them. See *Chong Min Mun v Soung Eun Hong*, 109 A.D.3d 732, 733 (1st Dep't 2013). "Because the existence of a factual issue may not be established by the hearsay information of one who had no personal knowledge of the facts . . . , the newspaper article fell short of the evidentiary showing needed to defeat a motion for summary judgment." *Young v. Fleary*, 226 A.D.2d 454, 455 (2d Dep't 1996) (citing *Eddy v. Tops Friendly Mkts.*, 59 N.Y.2d 692 (1983)).

2. CPLR § 302(a)(3) - Specific Jurisdiction

Next, IMAX argues that this Court has personal jurisdiction over The Essel Group and the individual respondents, Chandra, A. Goel, L. Goel, and Goenka pursuant to CPLR § 302(a)(3).

CPLR § 302(a)(3) provides that “[a]s to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent . . . commits a tortious act without the state causing injury to person or property within the state . . . if he (i) regularly does or solicits business . . . or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.”

The “determination of whether a tortious act committed outside New York causes injury inside the state is governed by the ‘situs-of-injury’ test, requiring determination of the location of the original event that caused the injury.” *Magwitch, L.L.C. v. Pusser’s Inc.*, 84 A.D.3d 529, 532 (1st Dep’t 2011); *Peters v. Peters*, 101 A.D.3d 403, 404 (1st Dep’t 2012).

IMAX asserts that The Essel Group and the individual respondents committed a tortious act in India by fraudulently transferring and divesting E-City of assets in order to avoid payment of the arbitration award, which they knew would have consequences in

New York. IMAX argues that the Essel Group and the individual respondents knew that the injury would occur in New York because IMAX has offices here, IMAX's chief executives are located here, the respondents negotiated the Master Agreement with IMAX in New York, and Chandra came to New York for meetings in connection with the Agreement. Further, IMAX contends that the New York office is where Chandra and E-City directed their communications concerning the issues relating to the dispute at issue.

Here, India is the location of the critical events associated with the dispute between these parties. The alleged fraudulent transaction that led to E-City's insolvency, the demerger of E-City, occurred in the High Court of Bombay, in India, not in New York. The decision to go forward with the demerger took place in India, the petition for the demerger was filed in the court in India, and any failure to notify IMAX of the proceedings, likewise took place in India. In this proceeding, the wrong alleged by IMAX is not the breach of the Master Agreement. It is the commencement of the demerger proceedings, and the failure of the parties therein to inform the court of IMAX's judgment. Thus, it is of no consequence in this court's consideration of the alleged injury pursuant to CPLR § 302 (a)(3) that the parties might have engaged in negotiations here in New York.

Nor can IMAX satisfy the second part of CPLR § 302(a)(3). With respect to individual respondents, A. Goel, Goenka and L. Goel, there are no allegations or proof that they regularly do or solicit business, or engage in any other persistent course of

conduct, or derive substantial revenue for goods or services used or rendered in New York; or reasonably expected the alleged tortious act to have consequences in the state. Nor has IMAX established that these three respondents derive substantial revenue from interstate or international commerce.

Based upon these submissions, the court does not have personal jurisdiction over The Essel Group or the individual respondents. Accordingly, the only entity subject to the jurisdiction of this court is Asia TV.

B. Possession, Custody, or Transferee of E-City's Funds

Because Asia TV is the only party over which this court has jurisdiction, the court must determine whether to grant IMAX's petition for a turnover order only with respect to this respondent.

Pursuant to CPLR § 5225(b), "a judgment creditor may obtain an order from a New York court, requiring a defendant who is in possession or custody of money or other personal property in which a judgment debtor has an interest to turn over the property or pay the money to the judgment creditor." *Koehler v Bank of Bermuda Ltd.*, 12 N.Y.3d 533, 540 (2009).

IMAX seeks to establish that, at the time it commenced this special proceeding, E-City was entitled to possession of the subject funds and that IMAX's rights to the funds are superior to those of Asia TV, as transferee of E-City's property. IMAX argues that

Asia TV is an alter-ego of E-City and that the companies should be treated as a “single personality” due to The Essel Group’s dominion and control over them both.

As discussed above, the court does not find that IMAX has established that Asia TV has an alter-ego relationship with The Essel Group, which means there can be no finding that Asia TV has any such relationship with any of the other respondents. Furthermore, a section 5225(b) turnover order cannot be issued against a transferee “lacking actual possession or custody of a judgment debtor’s assets or property.” *Commonwealth of the N. Mariana Is. v. Canadian Imperial Bank of Commerce*, 21 N.Y.3d at 63. Here, IMAX has not alleged or established an “actual conveyance of monetary assets” from E-City to Asia TV. *See Matter of Goldberg & Connolly v. Xavier Constr. Co., Inc.*, 94 A.D.3d 1117, 1118 (2d Dep’t 2012). Accordingly, I deny IMAX’s petition for a turnover order pursuant to CPLR § 5225(b).

II. Petition for Enforcement of Canadian Judgement Against Respondents Pursuant to CPLR § 5303

In this petition, IMAX also seeks to domesticate a judgment that it obtained against E-City Entertainment I Pvt. Ltd. (“E-City”) from the Superior Court of Justice in Ontario, Canada, directly against the respondents pursuant to CPLR § 5303. IMAX asserts that the judgment can be recognized against the respondents because they should be treated as alter egos or as a single personality as E-City. As stated above, IMAX fails to show that the respondents are one in the same entity as E-City, and therefore IMAX’s

request for an order to domesticate the Canadian judgment against the respondents is denied.

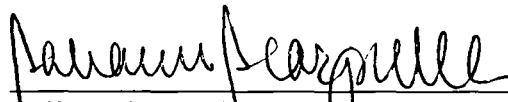
In accordance with the foregoing, it is hereby

ORDERED that IMAX Corporation's petition, seeking an order pursuant to CPLR § 5225(b) directing respondents The Essel Group, Subhash Chandra, Atul Goel, Amit Goenka, Laxmi Goel, Zee TV USA, Inc., Asia TV USA Ltd., and Natural Wellness USA, Inc. to deliver sufficient funds to satisfy the judgment, or directing respondents to deliver their personal property to the Sheriff of the County of New York to satisfy the judgment, and directing respondents to render an accounting of their corporate assets is denied (motion seq. 005).

This constitutes the decision, order and judgment of the Court.

Dated: New York, New York
October 9, 2015

E N T E R:


Saliann Scarpulla, J.S.C.